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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,992	01/17/2002	Denwood F. Ross III	VTN-0572	4178

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EXAMINER	
GAGLIARDI, ALBERT J	

ART UNIT	PAPER NUMBER
2878	

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/051,992	ROSS ET AL	
	Examiner	Art Unit	
	Albert J. Gagliardi	2878	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on *17 January 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Comment on Submissions

1. The response filed 16 September 2002 has been entered as Amendment A

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3, 6, 8-9, 11-16, 18-21, 23, and 24 are rejected under 35 U.S.C. 102(e) as being obvious over Duggan *et al.* (US 6,124,594).

Regarding independent claims 1, 20, and 21, and dependent claims 2, 3, 6, 8, 16, 23, and 24, *Duggan* discloses in Figures 1-2, and column 1, line 49 through column 2, line 31, an apparatus for detecting the presence of an ophthalmic product in a container, comprising: source 12 of electromagnetic energy (infrared energy) located relative to said container 2 (said container comprises a reflective metallic surface (or foil) 4); a detector 13 disposed relative to the container 2 and the source 12 to detect electromagnetic energy from the source which passes

through or is reflected by said product (contact lens) 3; and a processor (or controller with lookup table for FTIR data) 15 for determining the presence of the product 3 in the container responsive to fluorescence or reflection. Although *Duggan* does not specifically identify the detector as a non-imaging detector, those skilled in the art appreciate that non-imaging type detectors are much simpler and less expensive that imaging type detectors, and therefore would have been an obvious design choice within the skill of a person of ordinary skill in the art depending on the needs of the particular application.

Regarding claims 9 and 11, Duggan does not specifically disclose said detector comprising neural networks or said lens being a hygroscopic lens. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to select a detector which comprised neural networks as a matter of design choice in the material characterization art and to use a hygroscopic lens for investigation in view of column 1, lines 10-20 where hydrogel lenses are used for said product of examination.

Regarding dependent claims 12 and 13, Duggan further discloses in column 2, lines 8-30, said apparatus comprises a media which absorbs or reflects electromagnetic energy in a specified range and said media absorbs or reflects differently than said lens 3.

Regarding claims 14, 18, and 19, Duggan further discloses in column 2, line 62 through column 3, line 9, wherein said apparatus can comprise a plurality of sources and a plurality of detectors.

Regarding claims 15 and 16, Duggan discloses in column 2, lines 1-30, wherein said detection system comprises and FTIR system which inherently comprise spectrometer and calorimeter-type detectors.

5. Claims 4, 5, 7, 10, 17, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Duggan* in view of Collins *et al.* (US 5,633,504).

Duggan does not disclose said source providing ultraviolet light or a filter. Collins discloses in column 2, lines 44-62 and column 4, lines 15-30, an apparatus for detecting the presence of an ophthalmic product comprising: source which emits ultraviolet light and wherein said lens absorbs in the UV and wherein said source can also emit visible light for any particular measurement being made. Collins also discloses said system comprising a filter. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Duggan such that said energy source comprised ultraviolet light emission and filters could be used in order to alter the form of fluorescence that is being measured for a particular product as disclosed by Collins in column 4, lines 15-30.

Affidavit

6. The declaration filed on 16 September 2002 under 37 CFR 1.131 has been considered but is ineffective to overcome the effective date of the *Duggan* reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the *Duggan* reference.

The examiner notes that the declaration itself includes no statement of facts that actually allege that the invention was completed and reduced to practice prior to the effective date of the *Duggan* reference. In particular it is noted that statement 1 merely indicates the purpose for which the declaration was filed and that statement 5 is merely a conclusory statement explaining the purpose of Exhibit A. Conspicuously absent are even a general allegation or statement that

the invention was actually reduced to practice before the effective date, or any facts supporting the correctness of such an allegation.

Regarding the Exhibit, the examiner notes that the Exhibit itself does not provide any evidence that the invention as claimed was reduced to practice prior to the effective date. The examiner notes that the description of the invention in the Exhibit, while possibly suggesting conception of an invention similar to the invention represented by the claimed subject matter, does not show "reduction to practice" of the "claimed subject matter" (i.e., no mention of a processor or non-imaging detector). The examiner also notes that while the declaration indicates that any redacted dates are before the effective date, it is unclear what dates have actually been redacted (i.e. was the date the invention was tried or to be tried a date that was redacted, or was the date just left blank when the disclosure was completed.

The examiner also notes that supporting documents (i.e., sketches, photographs, requisition orders for parts, test results, etc.) would be helpful in supporting an allegation of reduction to practice.

Response to Arguments

7. Applicant's arguments filed 16 September 2002 have been fully considered but they are not persuasive. As noted above, the affidavit is insufficient to disqualify the *Duggan* reference as prior art, and therefore, applicant's arguments are moot.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert J. Gagliardi whose telephone number is (703) 305-0417. The examiner can normally be reached on Monday thru Friday from 9 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Porta can be reached on (703) 308-4852. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AJG
November 13, 2002

DAVID PORTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800